**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.1152 OF 1991**

1. Tata Motors Ltd. formerly known as The Tata Company Ltd., having their registered office at 'Bombay House", 24, Homi Mody Street, Mumbai - 400 001 and their works at Pune.

2. Shiavak Ratanshaw Vakil of Bombay Indian Inhabitant residing at Windmore, Cuffe Parade, Colaba, Bombay-400 005 ..Petitioners.

V/s.

1. The State of Maharashtra

2. The Assistant Commissioner of Sales Tax (Assessment) I, Unit V, Pune City, Pune having his office at Tilak Bhavan. 14A, Navi Peth, Lal Bahadur Shastri Marg, Pune- 411 030.

3. The Deputy Commissioner of Sales Tax (Appeals), Pune, having his office at Kartar Singh Building Pune-Satara Road, Pune 411 037.

4. The Maharashtra Sales Tax Tribunal, having its office at Vikrikar Bhavan, Mazgaon Bombay. ..Respondents.

Mr.G.S.Jetly, Senior Advocate with Mr.V.Sridharan, Advocate Mr.P.S.Jetly, Mr.H.N.Vakil and Ms.Vidya Shreekumar i/b. Mulla & Mulla for petitioners.

Mr.Vinay Sonpal, Advocate for respondents.

**CORAM : H.L.GOKHALE, ACTING C.J. AND J.P.DEVADHAR, J.**

**JUDGMENT RESERVED ON : 19TH DECEMBER, 2006.**

**JUDGMENT PRONOUNCED ON: 31ST JANUARY, 2007.**

**JUDGMENT (PER J.P.DEVADHAR, J.)**

1. This petition is filed mainly to challenge the constitutional validity of section 19 of the Maharashtra Sales, Profession, Luxuries and Sugarcane Tax Laws (Amendment levy and validation) Act, 1990 ('1990 Act' for short) whereby Rule 41C of the Bombay Sales Tax Rules, 1959 has been amended retrospectively. Rule 41-C was operative during the period from 19th January, 1976 till 30th June, 1981.

2. The petitioners have also challenged the orders passed by the Sales Tax Authorities under the Bombay Sales Tax Act, 1959 ('Bombay Act' for short) in Assessments relating to A.Y. 1979-80 to 1981-82, wherein the petitioners' claim for full rebate / set off / refund under Rule 41-C of the Bombay Sales Tax Rules, 1959 ('Bombay Rules' for short) has been rejected. However, we do not consider it proper to adjudicate upon that issue because, admittedly, the Appeals have been filed by the petitioners against the said orders and the said appeals are pending before the Appellate Authorities constituted under the Bombay Act. Therefore, the only question to be answered in this petition is, whether Section 19 of the 1990 Act is constitutionally valid ?

3. To appreciate the arguments of the counsel on both sides relating to the constitutional validity of section 19 of 1990 Act, it is necessary to refer to the relevant statutory provisions.

4. Article 286(3) of the Constitution provides that any State law in relation to imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in interstate trade or commerce, shall be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as the Parliament may by law specify.

5. In chapter IV of the Central Sales Tax Act, 1956 (‘Central Act’ for short) the Parliament has specified the goods which are of special importance in interstate trade or commerce. Chapter IV of the Central Act consists of two sections namely section 14 and section 15. In section 14 the Parliament has specified the goods which are of special importance in the interstate trade or commerce (‘declared goods’ for short) and in section 15 of the Central Act, the Parliament has inter alia provided that the tax payable under every sales tax law of a State in respect of any sale or purchase of declared goods inside the State shall not exceed three per cent (four per cent with

effect from 1st July 1975) of the sale or purchase price thereof.

6. Iron & steel is declared by the Parliament to be goods of special importance in interstate trade and commerce and the same is specified at item (iv) in section 14 of the Central Act. The said item (iv) consists of (xvi) sub items enumerating iron and steel in different forms and shapes. Thus, 'iron and steel' enumerated in (xvi) sub items of item (iv) in Section 14 of the Central Act are declared goods and its sale / purchase within the State, under any State law has to be subject to the conditions set out under Section 15 of the Central Act.

7. In the Bombay Act, Schedule B sets out the goods declared by the Parliament to be of special importance in interstate trade and commerce in Section 14 of the Central Act and Sections 7 and 13 of the Bombay Act deal with the levy of Sales tax and purchase tax on the declared goods. Section 7 of the Bombay Act (prior to 1st July, 1981) to the extent relevant herein reads thus :-

> "S. 7. Single point levy of sales tax or general sales tax on Declared good. (1) There shall be levied a sales tax, on the turnover of sales of Declared goods specified in Part I of Schedule B at the rate set out against each of them in column 3 thereof, but after deducting from such turnover -

(i) sales of goods on the purchase of which the dealer is liable to pay purchases tax [under Sec. 14]

(ii) re-sales of goods purchased by him on or after the appointed day from [ a Registered dealer, if a certificate as provided in Sec. 12 A is furnished, and],

(iii) ----------

(2) ----------

(i) ----------

(ii) ----------

(iii) ----------

'Iron and steel' in various forms and shapes which is declared goods specified in Section 14 of the Central Act are set out at Serial No.3 in Schedule B Part I of the Bombay Act. Serial No.3 in Schedule B, Part I of the Bombay Act (prior to 1st July, 1981) reads thus :-

| Sr. No. | Description of | Rate of sales tax | Rate of Purchase tax |
|---|---|---|---|
| 1 | ------ | ---- | ----- |
| 2 | ------ | ---- | ----- |
| 3 | Iron and steel, that is to say, - | Three paise in the rupee. | Three paise in the rupee. |
| (i) | pig iron and cast iron, including in gotmoulds, bottom plates, iron scrap, cast iron scrap, runner scrap, and iron skull scrap. | | |

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes) ;

(iii) skelp bars, tin bars, sheet bars, hoebars, and sleeper bars;

(iv) steel bars, rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil from as well as straight lengths);

(v) steel structural (angles, joints channels, tees, sheet piling sections, Z sections, or any other rolled sections);

(vi) sheets, hoops, strips, and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight length and in coil form, as rolled and in rivetted condition;

(vii) plates both plain and chequered in all qualities ;

(viii) discs, rings, forgings and steel castings;

(ix) tool, alloy and special steels of any of the above categories ;

(x) steel melting scrap in all forms

including steel skull, turning and borings ;

(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings ;

(xii) tin plate, both hot dipped and electrolitic and tin-free plates ;

(xiii) fish plate, bars, bearing plates bars, crossing sleepers bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-heavy and light crane rails;

(xiv) wheels, tyres, axles and wheel sets ;

(xv) wire rod and wires-rolled, drawn, galvanised, aluminised, tinned or coated such as by copper ;

(xvi) defectives, rejects, cuttings or end pieces of any of the above categories."

8. The petitioner No.1 a registered dealer under the Bombay Act and also under the Central Act is engaged in the manufacture and sale of motor-vehicle chassis and its parts. The raw materials required for the manufacture of motor vehicle chassis and its parts are iron & steel sheets, bars, tubes, etc. covered under the various sub items of iron and steel set out

at Serial No.3 in Schedule B, Part I of the Bombay Act. In the process of manufacturing motor vehicle chassis and its parts, iron & steel scrap is also generated. Motor vehicle chassis and its parts are covered under Schedule E of the Bombay Act, whereas, iron & steel scrap are covered under various sub-items of Serial No.3 in Schedule B, Part I of the Bombay Act.

9. Prior to 1976, the petitioners used to purchase the raw materials, namely, iron & steel bars, sheets, rounds, etc. on payment of tax at the rate specified at Column 3 & column 4 of Serial No.3 in Schedule B of the Bombay Act, and utilise the same in the manufacture of motor vehicle chassis and its parts covered under Schedule E of the Bombay Act. The manufactured goods, namely, motor vehicle chassis and its parts were sold on payment of sales tax at the rate prescribed under Schedule E of the Bombay Act. No sales tax was paid on sale of iron & steel scrap, because it was construed that in view of section 2(26) (iii) (as it then stood) of the Bombay Act such sale constituted ‘resale’ of iron & steel and, therefore, no tax would be payable. In other words, it was an accepted position that if a sub item of iron & steel purchased on payment of tax was converted into another sub item of iron & steel and sold, then, as per section 2 (26) (iii) of the Bombay Act, the sale of iron & steel in the converted form

would be a ‘resale’ of iron & steel and hence would not be taxed again.

10. On 19th January, 1976, the Apex Court delivered its judgment in the case of **State of Tamil Nadu V/s. Pyare Lal Malhotra [37 STC 319]**. In that case, the issue before the Apex Court was, whether sales tax was payable under the Tamil Nadu Sales Tax Act on sale of iron and steel sheets, bars, tubes etc. manufactured from raw materials such as iron and steel scrap on which sales tax has already been paid ? In that case, the Madras High Court took the view that if steel rounds, flats, angles or similar goods in other forms and shapes were manufactured from iron & steel scrap on which tax has been paid, then in view of section 15 of the Central Act, no tax can be levied on sale of steel rounds flats, angles, etc. because, both the manufactured goods as well as the raw materials were declared goods covered under item ‘iron & steel’ specified in Section 14 of the Central Act. Reversing the decision of the Madras High Court, the Apex Court held that each sub item of an item in section 14 of the Central Act is a separate taxable commodity and, therefore, tax would be payable on sale of steel rounds, flats angles, etc. even though the raw materials from which they were manufactured have already been taxed.

11. As a result of the aforesaid decision of the Apex Court, conversion of iron and steel from one sub item into another sub item of 'iron and steel' specified at Serial No.3 in Schedule B, Part I in the Bombay Act (item iv in section 14 of the Central Act) was liable to be treated as manufacture and tax became payable on sale of manufactured iron and steel. In other words, on sale of manufactured iron and steel tax became payable even though the same were manufactured from a sub item of iron and steel on which sales tax / purchase tax has already been paid.

12. With a view to grant relief to such manufacturers of Schedule B goods from Schedule B goods on which tax has been paid, the State Government issued a Notification on 28th March, 1977 thereby inserting Rule 41-C into the Bombay Rules. The said Rule 41-C was made operative till 30th June, 1981 by Government Notification dated 25th June, 1981. Rule 41-C, relevant for the purposes herein, as amended in the year 1981, reads thus :

> "41C. <u>Draw back, set off, etc. of tax paid by a manufacturer of goods specified in Schedule 'B'</u>:-
>
> In assessing the amount of tax payable in respect of any period after the 18th day of January, 1976 by a Registered dealer (hereinafter in this Rule referred to as the

"claimant dealer") the Commissioner shall, in respect of the purchases, made by the claimed dealer (during the period from 19th day of January, 1976 to the day immediately preceding the notified day) and purchases made by him prior to the 19th day of January, 1976 and held in stock on the 19th day of January, 1976 of goods specified in any entry of Schedule 'B', which were used by him in manufacture of goods specified in the same entry of Schedule 'B', for sale or export, grant him a drawback, set off or as the case may be, a refund of the aggregate of the following sums that is to say:

a) a sum recovered from the claimant dealer, by other Registered dealer by way of sales tax or general sales tax;
b) a sum paid or payable or purchased tax under Section 13 or 14;
c) .....

13. Thus, drawback, set off etc. under Rule 41-C was available provided :-

a) the assessment relates to the period after 18th January, 1976,

(b) the manufacturer had purchased raw materials specified in any entry of Schedule B and held in stock on 19th January, 1976 or purchased the said goods during the period from 19th January, 1976 to 30th June, 1981, and

(c) used the aforesaid goods in the manufacture of goods specified in the same entry of Schedule B for sale or export.

14. At this stage, we may note that this Court on 26th November, 1982 in the case of **Shree Ram Steel Rolling Mills V/s. State of Maharashtra** (decided on 26th November, 1982) reported in (**53 S.T.C. 202**) held that even after the decision of the Apex Court in the case of Pyare Lal Malhotra (supra) manufacture of mild steel ingots (a form of iron and steel set out at Serial No.3) into mild steel rounds (another form of iron & steel set out at Serial No.3) would constitute 'resale in view of Section 2(26)(iii) of the Bombay Act read with Rule 3 (xviii) of the Bombay Rules. To overcome this anomaly, section 2(26) (iii) of the Bombay Act as well as rule 3 (xviii) of the Bombay Rules have been amended by Maharashtra Act 9 of 1984 with retrospective effect from 19th January, 1976.

15. As a result of the above amendment, during the period from 19/1/1976 to 30/6/1981 even under the Bombay Act, tax became payable on sale or export of Schedule B goods manufactured from Schedule B goods on which tax has been paid, however, in view of Rule 41-C, the manufacturer was entitled to avail the benefit of

drawback, set off etc. of tax paid on Schedule B goods used in the manufacture of Schedule B goods.

16. By Section 19 of 1990 Act, Rule 41-C has been amended retrospectively. Section 19 of the 1990 Act reads thus :

> "In Rule 41C of the Bombay Sales Tax Rules, 1959, after the words "manufacture of goods" the brackets and words "(not being waste goods or scrap Sales Tax goods or by-products)" shall be inserted and shall be deemed always to have been inserted."

17. Rule 41-C as amended by Section 19 of 1990 Act (to the extent relevant herein) reads thus:-

> "41C. Draw back, set off etc. of tax paid by a manufacturer of goods specified in Schedule B-
>
> In assessing the amount of tax payable in respect of any period after the 18th day of January, 1976 by a Registered dealer (hereinafter in this Rule referred to as the "claimant dealer") the Commissioner shall, in respect of the purchases, made by the claimed dealer (during the period from 19th day of January, 1976 to the day immediately preceding the notified day) and purchases made by him prior to the 19th day of January, 1976 and held in stock on the 19th day of January 1976 of goods specified in any entry of Schedule 'B', which are used by him in manufacture of goods [not being waste goods or scrap goods or by-products] specified in the same entry Schedule 'B' for sale or export, grant him a drawback, set off or as the case may be, a a refund of the aggregate of the following sum, that is to say:-

a) a sum recovered from the claimant dealer, by other registered dealer by way of sales tax or general sales tax;

b) a sum paid or payable as purchase tax under Section 13 or 14;

c) .....

(emphasis supplied)

18. Mr.Jetly, learned senior advocate appearing on behalf of the petitioners submitted that the retrospective amendment to Rule 41-C by Section 19 of 1990 Act is unreasonable and unconstitutional, because, firstly, similar retrospective amendment to Rule 41-E made by Section 26 of the Maharashtra Act 9 of 1989 has been declared by the Apex Court to be unreasonable and unconstitutional in the case of **Tata Motors Limited V/s. State of Maharashtra** reported in **136 STC 1**. Secondly, Rule 41-C ceased to be operative from 30th June, 1981 and, therefore, it was not open to the legislature in the year 1990 to retrospectively amend rule 41-C which had ceased to be in operation from 1st July, 1981. Thirdly, Section 74 of the Bombay Act does not empower the State to amend the rules retrospectively and, therefore, the retrospective amendment to Rule 41-C is bad-in-law.

19. Elaborating his arguments Mr.Jetly submitted that during the relevant assessment years, that is,

during AY 1979-80 to 1981-82, the petitioners had purchased iron and steel sheets, bars, tubes etc. on payment of tax at the rate specified at Serial No.3 in Schedule B, Part I of the Bombay Act and used the same in the manufacture of motor vehicle chassis and its parts covered under Schedule E and also in the manufacture of iron and steel scrap specified at Serial No.3 in Schedule B, Part I of the Bombay Act. Motor vehicle chassis and its parts have been sold on payment of sales tax at the rate specified in Schedule E and similarly, iron & steel scrap have been sold by the petitioners on payment of sales tax at the rate specified at serial No.3 in Schedule B, Part I of the Bombay Act. Mr.Jetly submitted that in the light of Rule 41-C as it stood prior to its amendment, the petitioners had vested right to avail full set off of tax paid on purchase of iron and steel when used in the manufacture of Motor vehicle chassis / parts as well as manufacture of iron and steel scrap. In fact, the respondents had given proportionate set off even though the petitioners were entitled to full set off and appeals on that issue are pending before the appellate authorities. Therefore, the State could not have enacted law in the year 1990 so as to take away the vested right of the petitioners to claim full set off under Rule 41-C as originally enacted.

20. Relying on the decision of this Court in the case of **Commissioner of Sales Tax V/s. Burmah Shell Refineries Ltd. (41 STC 337)** which is upheld by the Apex Court in the case of **Commissioner of Sales Tax V/s. Bharat Petroleum Corporation Ltd.** reported in **85 STC 220** as also the decisions of the Maharashtra Sales Tax Tribunal in the case of **M/s.Supreme Metal Industries V/s. The State of Maharashtra** delivered on 25th February, 1987 and the decision of the Tribunal in the case of **Taparia Tools Ltd. V/s. The State of Maharashtra** decided on 28th March, 1988, Mr.Jetly submitted that where a manufacturing process results in simultaneous production of two commodities, then, in the absence of any rule providing for apportionment of the tax paid on purchase of the raw materials used, full set off must be granted under Rule 41-C. He submitted that the aforesaid decisions have attained finality and thus it is judicially recognised that under Rule 41C, manufacturers like the Petitioners have a vested right to seek full set off of tax paid on raw materials. Therefore, the impugned Act which seeks to deprive the vested right accrued to the manufacturers like the petitioners is liable to be declared as arbitrary, illegal and contrary to law.

21. Mr.Jetly further submitted that Rule 41-C was operative from 19th January, 1976 to 30th June, 1981.

Thereafter, by inserting Rule 41E with effect from 1st July 1981, reliefs similar to Rule 41C were made available to the manufacturers. Rule 41-E was sought to be amended by making amendments which are similar to the amendment made to Rule 41-C by Section 19 of 1990 Act and the Apex Court in the case of Tata Motors (supra) has held that the amendment to Rule 41-E are invalid. Therefore, in the light of the decision of the Apex Court in the case of Tata Motors, the amendment to Rule 41-C by section 19 of the 1990 Act is liable to be declared as unconstitutional.

22. Mr.Jetly further submitted that there is no provision in the Bombay Act which permits the legislature and / or the State Government to withdraw drawback, set off, refund, etc. retrospectively. In the absence of any statutory provision, the impugned legislation which seeks to amend Rule 41-C retrospectively must be declared to be illegal and contrary to law. He submitted that by enacting section 74 in the Bombay Act the legislature has delegated the power to make rules to the State Government. Having done so, the legislature has no power to amend the rules retrospectively and withdraw the benefits which were legitimately due to the assessees. Similarly, even the State Government by retrospective legislation cannot curtail / vary / withdraw the concessions

already granted.

23. Mr.Jetly submitted that amendment to Rule 41-C cannot be said to be clarificatory in nature because the amendment imposes a levy for the first time in the year 1990 retrospectively for the period from 19th January, 1976 to 30th June, 1981. This was never envisaged and / or canvassed by the department and in fact in the original assessments partial set off was granted to the petitioners by the officers of the department. Therefore, it is not open to the revenue to contend that Rule 41-C was never intended to cover manufacturers like petitioners. Accordingly, Mr.Jetly submitted that by the impugned legislation, the vested right accrued under Rule 41C is sought to be taken away, retrospectively without any justification and, therefore, the impugned legislation is liable to be quashed and set aside.

24. Mr.Sonpal, learned counsel appearing on behalf of the respondents submitted that the impugned Act is clarificatory in nature and that the said Act does not take away any of the benefits available to the manufacturers under Rule 41-C as originally enacted. He submitted that set off under Rule 41-C was not available at any time to the class of dealers such as the petitioners. He submitted that the benefit under

rule 41-C was available to the manufacturers who purchased Schedule B goods on payment of tax during the relevant period and used the same in the manufacture of Schedule B goods only. Manufacturers like the petitioners who purchased Schedule B goods on payment of tax and used the same in the manufacture of Schedule E goods and incidently manufactured Schedule B goods like iron & steel scrap were not covered under Rule 41-C. The fact that the iron & steel scrap generated in the manufacture of Schedule E goods are also taxed would not be a ground to hold that Rule 41-C applied to those manufacturers.

25. Mr.Sonpal further submitted that prior to the decision of the Apex Court in the case of Pyare Lal Malhotra (supra), the dealers who purchased iron & steel sheets a sub item of iron and steel specified at Serial No.3 in Schedule B, Part I on payment of tax and used the same in the manufacture of iron & steel rounds, covered another sub item of iron & steel specified at serial No.3 in Schedule B, Part I, then on sale of such iron & steel rounds, no tax was payable. As the Apex Court on 19/1/1976 in the case of Pyarelal Malhotra (supra) held that each sub entry of ‘iron and steel’, is a separate taxable commodity of declared goods, tax became payable on sale of iron & steel round even though the same was manufactured from iron & steel

sheets on which tax has been paid. To give relief to such dealers who were required to pay tax on manufacture of Schedule B goods by utilising Schedule B goods on which tax has been paid, the State Government enacted Rule 41-C. Rule 41-C had no application where Schedule B goods were used in the manufacture of goods covered under Schedule ‘C’ or ‘D’ or ‘E’ and during such manufacture, Schedule B goods emerge as remnants or by products. He submitted that the dealers who manufactured Schedule C or D or E goods by utilising the taxed Schedule B goods were eligible to claim set off under Rule 41-A of the Bombay Rules. Rule 41-C was never meant for dealers like the petitioners who purchased schedule B goods and used the same in the manufacture of goods covered under Schedule E. The fact that iron & steel scrap was generated in the above process and on sale of such iron & steel scrap tax became payable from 19/1/1976 would not entitle the petitioner to claim relief under Rule 41-C.

26. Mr.Sonpal submitted that the Maharashtra Sales Tax Tribunal in the case of Supreme Metal Industries (supra) and in the case of Taparia Tools Ltd. (supra) took a pedantic and narrow view without considering the purpose, object, context and circumstances under which Rule 41-C was inserted and held that where Schedule B goods on which tax has been paid are used in the

simultaneous production of Schedule E goods as well as Schedule B goods, then, on sale thereof, under the Rule 41-C, the manufacturer would be entitled to claim set off of tax paid on schedule B goods used in such manufacture. He submitted that the Tribunal in the aforesaid cases erroneously applied the ratio laid down by this Court in the case of Burmah Shell Refineries Limited (supra) which is distinguishable on facts. Instead of challenging the said decisions of the Tribunal, the State Government thought it fit to clarify the scope of Rule 41-C by retrospectively amending it. He submitted that amendment to Rule 41-C must not be interpreted literally and must be interpreted by applying the principles of purposive interpretation after taking into consideration the situation prevailing at the time of insertion of Rule 41C.

27. Mr.Sonpal further submitted that the ratio laid down by this Court in the case of Burmah Shell Refineries (supra) which is duly affirmed by the Apex Court in the case of Bharat Petroleum Corporation Ltd. (supra) has no application to the facts of the present case. Relying upon the decision of this Court in the case of **Commissioner of Sales Tax V/s. Saravagi Industries** reported in **1985 Mah. L.J. 116** counsel for the State submitted that in the present case the

Schedule B goods purchased by the petitioners must be held to have been used in the manufacture of Schedule E goods and merely because some scrap generated in the manufacture of Schedule E goods is taxed when sold at the rate specified in Schedule B, it cannot be said that the petitioners have manufactured Schedule B goods so as to claim full set off under Rule 41-C of the Bombay Rules.

28. Mr.Sonpal further submitted that where the manufacturing process results in the simultaneous production of goods covered under Schedule C or D or E, as well as goods specified in Schedule B and if it is not possible to ascertain the quantity of Schedule B goods used in the manufacture of Schedule B goods, then, they are not entitled to any relief under Rule 41-C. With a view to grant relief to such manufacturers, the State Government has inserted a proviso to Rule 41-E with effect from 1st April, 1988. The insertion of the said proviso to Rule 41-E is not challenged by any of the parties. Therefore, the petitioners are entitled to claim proportionate set off with effect from 1st April, 1988 and they cannot seek any relief under Rule 41C.

29. Relying upon the decisions of the Apex Court in the case of **J.K. Spinning and Weaving Mills Ltd. &**

**Anr. V/s. Union of India & Ors.[1987 (32), E.L.T. 234 (S.C.)], J.K. Jute Mills Co. Ltd. V/s. State of U.P. & Anr. [1961 Supreme Court 1534], Lancaster Motor Company (London) Ltd. V/s. Bremith Ltd. V/s. Barclays Bank, Limited (Garnishes) [ 1941 (1) KB 675], Municipal Corporation of Delhi V/s. Gurnam Kaur [(1989) 1 Supreme Court Cases 101], A-one Granites V/s. State of U.P. and Ors. [(2001) 3 Supreme Court Cases 537], Pradeep Kumar Biswas V/s. Indian Institute of Chemical Biology & Ors. [(2002) 5 Supreme Court Cases 111], General Finance Co. & Anr. V/s. Asstt. Commissioner of Income Tax, Punjab [ (2002) 7 Supreme Court Cases 1], Deb Narayan Shyam & Ors. V/s. State of West Bengal & Ors. [2005 (104) FLR 843], M/s. Zee Tele Films Ltd. & Anr. V/s. Union of India & Ors. [A.I.R. 2005 Supreme Court 2677] and Bengal Immunity Co. V/s. State of Bihar [1955 Supreme Court 661**, Mr. Sonpal submitted that the legislature is competent to amend any law retrospectively with a view to clarify the existing provisions. In the present case, the Maharashtra Sales Tax Tribunal in the case of Supreme Metal India Limited (Supra) and in the case of Taparia Tools Limited (supra) had erroneously interpreted Rule 41-C and, therefore, the legislature thought it fit to clarify the doubts by retrospectively amending Rule 41-C and bringing out clearly that since inception the said Rule would not apply if the manufactured goods are

waste goods or scrap goods or by-products.

30. Mr.Sonpal further submitted that the decision of the Apex Court in the case of Tata Motors (supra) is distinguishable on facts because, firstly, in that case, the Apex Court was concerned with the retrospective amendment to Rule 41-E wherein the amendment was only for the limited period from 1st April, 1984 to 31st March, 1988, whereas, amendment to Rule 41-C is for the entire period during which Rule 41-C was in operation. Secondly, in the case of Tata Motors, admittedly, the learned counsel for the State of Maharashtra could not place before the Court the circumstances under which Rule 41-E was amended with retrospective effect, whereas, in the present case, the respondents have set out in detail the circumstances under which Rule 41-C was enacted in the year 1977 and amended in the year, 1990. Accordingly, Mr.Sonpal submitted that the amendment to Rule 41-C being clarificatory in nature, the petition is liable to be dismissed.

31. On careful consideration of the rival submissions, we find it difficult to accept the argument of the State that the retrospective amendment to Rule 41-C by Section 19 of the 1990 Act is clarificatory in nature.

32. Plain reading of Rule 41-C (as originally inserted) would mean that a manufacturer who purchases goods specified in any entry of Schedule B on payment of sales tax / purchase tax as raw materials and utilises the same during the relevant period in the manufacture of goods specified in the same entry of Schedule B for sale or export, shall be entitled to grant of draw back / set off / refund of the aggregate of the sum of sales tax / purchase tax paid / payable on the raw materials used in the manufacture of schedule B goods. In other words, where the raw materials as well as the goods manufactured therefrom are declared goods specified in Schedule B, then, while assessing the tax payable during the period from 19/1/1976 to 30/6/1981, the manufacturer, under Rule 41-C would be entitled to drawback, set off etc. of tax paid on the raw materials used in such manufacture.

33. The question, however, to be considered is, whether the benefit of Rule 41-C as inserted was applicable to a manufacturer who utilised Schedule B goods mainly in the manufacture of Schedule ‘C’ ‘D’ or ‘E’ goods and in that manufacturing process Schedule B goods like ‘iron & steel scrap’ emerge as ramnants or by products. The words used in Rule 41-C do not even remotely suggest that the benefit therein was

restricted to manufacturers who used Schedule B goods exclusively in the manufacture of Schedule B goods. What is relevant under Rule 41-C is use of Schedule B goods in the manufacture of Schedule B goods. Therefore, on a plain reading of Rule 41-C, a manufacturer who uses schedule B goods whether exclusively in the manufacturer of schedule B goods, or uses in the simultaneous production of Schedule C or D or E goods as well as goods covered under Schedule B would be entitled to the benefits set out therein.

34. It is pertinent to note that Rule 41-C was inserted into the Bombay Rules in the light of the Judgment of the Apex Court in the case of Pyare Lal Malhotra (supra). In that case, the Apex Court held that each of the 16 sub items of 'iron & steel' specified in section 14 of the Central Act represent a distinct commercial commodity. The said 16 categories of iron & steel enumerated in section 14 of the Central Act are specified at serial No.3 in Schedule B, Part I of the Bombay Act. 'Iron & steel scrap' is one of the sub items of 'iron & steel' specified at serial No.3 in Schedule B, Part I of the Bombay Act. Therefore, where iron & steel scrap is manufactured from iron & steel, the manufacturer would be entitled to drawback, set off etc. under Rule 41-C.

35. To illustrate, suppose 100 m. tons of iron and steel sheets purchased on payment of tax at 3% specified at serial No.3 in Schedule B Part I (Rs.300/-) were utilised in the manufacture of iron and steel plates, then under the Bombay Act, in the light of the decision of the Apex Court in the case of Pyare Lal Malhotra (supra), on sale of iron and steel plates tax amounting to Rs.300/- at 3% specified at serial No.3, Schedule B, Part I, would be payable even though tax was paid on purchase of iron and steel sheets. At the same time, as per Rule 41-C, the manufacturer would be entitled to claim drawback / set off of the tax of Rs.300/- paid on purchase of iron and steel sheets. Similarly, if iron & Steel scrap is manufactured from iron & steel sheets, drawback, set off, etc. under Rule 41-C would be available to the manufacturer because, both, the iron & steel scrap and iron & steel sheets are distinct commercial commodities of iron & steel specified at serial No.3 in schedule B, Part I of the Bombay Act.

36. The argument of the State is that Rule 41-C as originally inserted was not to apply to cases, where iron and steel was mainly used in the manufacture of goods other than schedule B goods. According to the State, if iron & steel was mainly used in the manufacture of motor vehicle chassis and its parts

covered under Schedule E and ‘iron and steel scrap’ emerges in the above manufacturing process as remnants or by product, then, in such cases, Rule 41-C was not applicable. There is no merit in this argument because, firstly, it is not the mandate of Rule 41-C that Schedule B goods purchased on payment of tax must be used exclusively in the manufacture of Schedule B goods. There is no reason to construe Rule 41-C so narrowly so as to deny the benefit of Rule 41-C to the manufacturers who used Schedule B goods in the simultaneous production of Schedule E goods and Schedule B goods. In other words, to avail the benefit of Rule 41-C, what is relevant is that the manufacturer must have used Schedule B goods in the manufacture of Schedule B goods and it was wholly irrelevant as to whether Schedule B goods manufactured were main product or ramnants or a by product. Secondly, ‘iron and steel scrap’ arising in the manufacture of motor vehicle chassis / parts is admittedly a manufactured item and on sale of such iron & steel scrap, tax is payable at the rate specified in Schedule B. In such a case, since iron & steel scrap is manufactured from iron & steel, Rule 41-C would be squarely applicable.

37. However, in such cases, the question would be, how to determine the quantum of drawback / set off etc. under Rule 41-C ? It is for the manufacturer who

claims relief under Rule 41-C to establish and prove the quantity of iron and steel used in the manufacture of iron and steel scrap. To illustrate, if 100 m. tons of iron and steel are used in the simultaneous manufacture of motor vehicle chassis / its parts and iron and steel scrap, then the manufacturer who claims relief under Rule 41-C must establish the quantity of iron and steel used in the manufacture of iron and steel scrap. For example, if it is established that out of 100 m. tons of iron and steel, 10 m. tons of iron and steel have been used in the manufacture of iron and steel scrap, then the drawback / set off etc. under Rule 41-C would be the tax paid on purchase of 10m. tons of iron and steel.

38. If the manufacturing process is so integrated that the manufacturer cannot establish the quantity of iron and steel used in the manufacture of iron and steel scrap, then such manufacturer would not get the drawback / set off etc. under Rule 41-C. With a view to give relief to such manufacturers, a proviso has been inserted in Rule 41-E with effect from 1st April, 1988 thereby granting proportionate drawback / set off etc. Thus, it is evident that since inception, Rule 41-C was applicable to the manufacture of waste goods / scrap goods / by products and it is only where it was not possible to ascertain the quantity of Schedule B

goods used in such manufacture, the State has decided to grant proportionate drawback, set off, etc. with effect from 1/4/1988. The fact that the manufacturers who could not establish the quantity of iron & steel used in the manufacture of iron & steel scrap have been granted proportionate relief with effect from 1/4/88 does not mean that under Rule 41-C as originally inserted, none of the manufacturers who produced iron & steel scrap as ramnants or by products were eligible for drawback, set off, etc. In other words, in an integrated process, it would be open to a manufacturer to establish the quantity of iron & steel used by him in the manufacture of iron & steel scrap and such a manufacturer would have vested right to claim drawback, set off etc. under Rule 41-C to the extent of tax paid on iron and steel used in the manufacture of iron and steel scrap.

39. Once it is held that the manufacturer of iron and steel scrap had a vested right to claim drawback / set off under Rule 41-C, then in the absence of any compelling reasons or overriding public interest or equity, the said vested right could not be withdrawn by retrospective legislation. It is pertinent to note that similar amendments made to Rule 41-E by Finance Act, 1989 has been struck down by the Apex Court in the case of Tata Motors Limited (Supra). Moreover, when

the State with effect from 1/4/81 has granted the benefit of drawback, set off, etc. even to the manufacturers of iron & steel scrap who are not in a position to establish the quantity of iron and steel used in the manufacture of iron and steel scrap, it is difficult to hold that 41-C was never intended to cover manufacturers of iron & steel scrap as ramnants or by products, even if they were in a position to establish the quantity of iron & steel used in the manufacture of scrap. In this view of the matter, the contention of the State that Rule 41-C was not applicable where iron & steel scrap emerges as ramnants or by product cannot be accepted. Consequently, the argument of the State that section 19 of the 1990 Act is clarificatory in nature must fail.

40. As stated earlier, the State has not placed on record any material to show that the retrospective amendment was necessitated on account of any overriding public interest or equity. The only ground urged before us is that the retrospective amendment to Rule 41-C was necessitated because of the decisions of the Maharashtra Sales Tax Tribunal in the case of Supreme Metal Industries (Supra) and in the case of Taparia Tools Limited (supra). In our opinion, in the aforesaid two cases the sales tax Tribunal has erroneously applied the ratio laid down by this Court

in the case of Commissioner of Sales Tax V/s. Burmah Shell Refineries Limited (41 STC 337) which is ultimately approved by the Apex Court in the case of **Commissioner of Sales Tax V/s. Bharat Petroleum Corporation Limited** reported in **85 STC 220.** In the case of Bharat Petroleum Corporation Limited (Supra) crude oil and Sulphuric Acid were used in the manufacture o Kerosene and Acid Sludge. At the material time, no tax was payable on kerosene, whereas, tax was payable on Acid Sludge. Under Rule 41-A, set off was avail able where the raw materials purchased on payment of tax were used in the manufacture of taxable goods. Since kerosene manufactured was neither sold nor attracted sales tax, it was contended by the State in that case, that the set off of tax paid on sulphuric acid used in the manufacture of Kerosene would not be available. Rejecting the contention of the State it was held that since the entire sulphuric acid purchased has gone into the manufacture of kerosene and Acid Sludge and since Rule 41-A did not require that the purchased goods must be used exclusively in the manufacture of taxable goods for sale, the set off under Rule 41-A cannot be denied. The said decision has no application to the facts of the present case because firstly, in the above case, the Apex Court was considering the scope of Rule 41-A whereas in the present case, we are concerned with the interpretation

of Rule 41-C. Secondly, under Rule 41-A drawback, set off, etc. was available where goods on which tax has been paid were used in the manufacture of taxable goods covered under any schedule of the Bombay Act, whereas under Rule 41-C drawback, set off, etc. was available, where Schedule B goods were used in the manufacture of Schedule B goods whether as main product or by product or as ramnants. Thirdly, in the case of Bharat Petroleum Corporation Ltd. (supra) the categorical finding recorded (see 85 S.T.C.220 at 231) is that though the Sulphuric Acid was used in the manufacture of kerosene, the entire sulphuric acid purchased has gone in the manufacture of Acid sludge a by product which was a taxable commodity and accordingly it was held that the conditions of Rule 41-A have been complied with. There were no findings recorded by the Tribunal to the effect that the entire quantity of iron & steel purchased on payment of tax has been used in the manufacture of iron & steel scrap. Therefore, merely because the Sales Tax Tribunal has erroneously applied the law laid down by this Court and the Apex Court, the State could not have retrospectively amended Rule 41-C so as to take away the vested right accrued to the manufacturers.

41. Although, Mr. Sonpal strongly relied upon the decision of this Court in the case of Saravagi

Industries (supra), we do not think it necessary to go into its applicability to the facts of the present case. Suffice it to say that if the Tribunal had erroneously applied the ratio laid down in the case of Burmah Shell Refineries Ltd. (supra), the proper course was to challenge the said decisions before the High Court, instead of amending Rule 41-C retrospectively and take away the vested right accrued to the manufacturers. In this view of the matter, we are clearly of the view that the State has failed to establish that section 19 of 1990 Act is clarificatory in nature and the State has failed to establish overriding public interest or equity so as to deprive the vested right accrued to the manufacturers under Rule 41-C.

42. In the result, petition succeeds. It is declared that Section 19 of the 1990 Act is unreasonable, invalid and unconstitutional. In the proceedings pending before the authorities below, it will be open to the petitioners to establish the quantity of iron and steel used by them in the manufacture of iron and steel scrap and accordingly avail the benefit of drawback / set off, etc. under Rule 41-C. The Writ Petition is disposed of in the above terms with no order as to costs.

**( H.L.GOKHALE )**

**(Acting Chief Justice)**

**(J.P.DEVADHAR, J.)**